

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF**



74-2370 BPLS

**In the United States  
Court of Appeals for the Second Circuit**

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No. 74-2370

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GERARD and GEMMA BRAULT

v.

TOWN OF MILTON



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ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE DISTRICT  
OF VERMONT

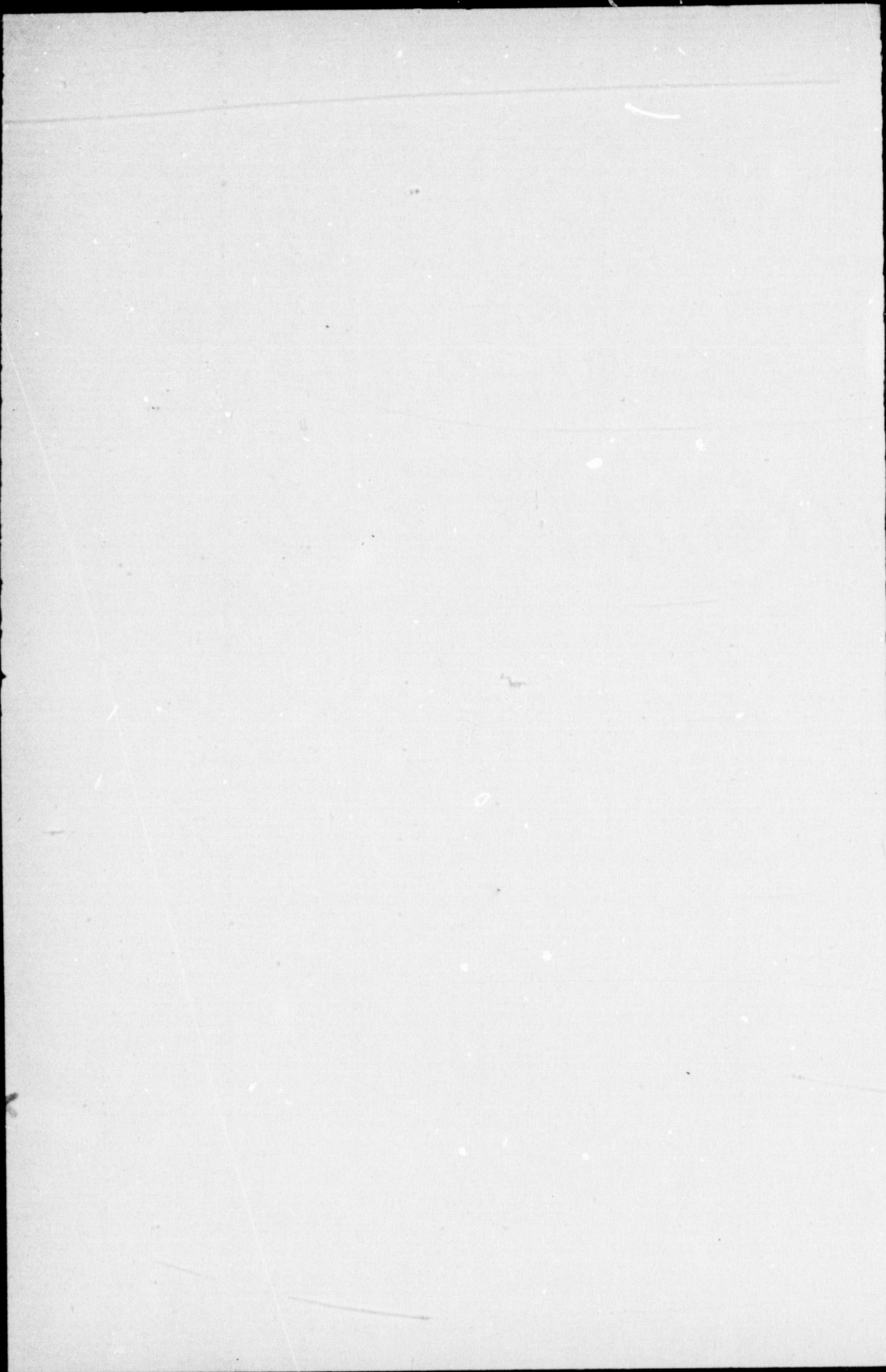
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BRIEF FOR APPELLANTS

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## TABLE OF CONTENTS

	Page
Table of Cases .....	ii
Table of Authorities .....	iii
Factual Summary .....	1
Issue .....	1
Argument .....	1
Conclusion .....	3

## TABLE OF CASES

	Page
<b>Bell v. Hood</b> , (1946) 327 U. S. 678, 66 S. Ct. 773, 90 L. Ed. 939 .....	2, 3
<b>Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics</b> , (1971) 403 U. S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d. 619 .....	2, 3
<b>Bruno v. City of Kenosha</b> , (1973) 412 U. S. 507, 93 S. Ct. 2222, 37 L. Ed. 2d. 109 .....	2, 3
<b>Dennis v. Tonka Bay</b> , (1945 CA 8 Minn.) 151 F. 2d. 411 .....	1
<b>Dupree v. Chattanooga</b> , (1973), 362 F. Supp. 1136 ....	2
<b>Eisen v. Eastman</b> , (1969, CCA 2d.) 421 F. 2d. 560 ....	2
<b>Gonzales v. Doe</b> , (1972) 476 F. 2d. 680 .....	2
<b>Monroe v. Pape</b> , (1961) 365 U. S. 167, 81 S. Ct. 473, 5 L. Ed. 2d. 492 .....	2
<b>Moor v. Alameda County</b> , (1973) 411 U. S. 693, 93 S. Ct. 1785, 36, L. Ed. 2d. 596 .....	2

## TABLE OF AUTHORITIES

	Page
<b>United States Constitution</b>	
Fourteenth Amendment .....	1, 2
<b>Statutes</b>	
28 U. S. C. 1331 (a) .....	1, 2, 3
28 U. S. C. 1343 .....	2
42 U. S. C. 1983 .....	1, 2
42 U. S. C. 1985 .....	1, 2
42 U. S. C. 1986 .....	1, 2

## FACTUAL SUMMARY

This case is brought against a Vermont Municipal Corporation (Appendix, Page 2), alleging violation of Federal rights under the Fourteenth Amendment (Appendix, Page 3) and Federal statutes (Appendix, Page 2). The amount in controversy exceeded Eighty Four Thousand Dollars (\$84,000) (Appendix, Page 3). Jurisdiction is founded on 28 U. S. C. Section 1331(a) (Appendix, Page 2).

The Court granted the defendant's motion to dismiss without a hearing on the amount in controversy. (Appendix, Page 1, 6). The basis for the court's action was the fact that the defendant was a municipal corporation. (Appendix, Page 6). From the granting of the dismissal motion, plaintiff timely appealed. (Appendix, Page 6).

## ISSUE

Whether a Federal District Court may dismiss without hearing as to amount in controversy an action against a municipal corporation in which violations of Federal rights are alleged and jurisdiction is founded on 28 U. S. C. Section 1331(a).

## ARGUMENT

### **The Trial Court Erred in Dismissing the Instant Case**

For purposes of a motion to dismiss on jurisdictional grounds all allegations of the complaint must be taken as true. **Dennis V. Tonka Bay**, (1945, CA 8 Minn.) 151 F.2d. 411.

The case, therefore, is against a municipality for damages in excess of Eighty Four Thousand Dollars (\$84,000) to redress rights under the Fourteenth Amendment (Appendix, Page 3) and 42 U. S. C. Sections 1983, 1985 and 1986.

The Court in dismissing relied on **Monroe v. Pape**, (1961) 365 U. S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492 (Appendix, Page 6). If the court's rationale were accurate, it could also have relied on **Moor v. Alameda County**, (1973) 411 U. S. 693, 93 S. Ct. 1785, 36 L. Ed. 2d 596, and this court's decision in **Gonzales v. Doe**, (1972) 476 F. 2d 680.

However, in each of the three cases referred to above, only an action under 42 U. S. C. Section 1983 alleging jurisdiction under 28 U. S. C. Section 1343 was involved. In each case, the courts denied jurisdiction.

In the case at bar, jurisdiction is founded on 28 U. S. C. Section 1331(a) (Appendix, Page 2). The rights violated arise directly under the Fourteenth Amendment and Sections 1985 and 1986 of Title 42 as well as 42 U. S. C. Section 1983 (Appendix, Pages 2, 3). This difference creates a valid legal distinction and a varied result. **Eisen v. Eastman**, (CCA 2d 1969) 421 F. 2d. 560. This is particularly true when the amount in controversy clearly exceeds Ten Thousand Dollars (\$10,000), the jurisdictional amount. **Bruno v. City of Kenosha**, (1973) 412 U. S. 507, 93 S. Ct. 2222, 37 L. Ed. 2d 109.

The jurisdictional rationale was first articulated in **Bell v. Hood**, (1946), 327 U. S. 678, 66 S. Ct. 773, 90 L. Ed. 939, and later reaffirmed in **Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics**, (1971) 403 U. S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619.

In a case involving a suit for enforcement of Fourteenth Amendment rights against a municipality, the United States District Court for the District of Tennessee followed the rationale of the Supreme Court in **Bruno**, *supra*, and held that the Federal Court had jurisdiction under 28 U. S. C. Section 1331(a) **Dupree v. Chattanooga**, (1973) 362 F. Supp. 1136.

It was most clearly made applicable to the facts of the instant case by Justices Brennan and Marshall concurring in **Brunc, supra**, in their words:

"Appellees did assert 28 U. S. C. §1331 as an alternative ground of jurisdiction, but I agree with the court's conclusion that the existence of the requisite amount in controversy is not on this record clearly established. If appellees can prove their allegation that at least \$10,000 is in controversy, then §1331 jurisdiction is available. **Bell v. Hood**, (1946) 372 U. S. 678; c. f. **Bivens v. Six Unknown Named Agents of the Bureau of Narcotics**, *supra*, and they are clearly entitled to relief." **Bruno v. City of Kenosha** 412 U. S. 507 at 516.

### CONCLUSION

It is, therefore, clear that, on the face of the complaint, a case cognizable in Federal District Court is made out. The Court's dismissal on jurisdictional grounds was improvident. Reversal and remand is required.

Respectfully Submitted,  
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I hereby certify that the within pleading appellant's brief and  
appendix

has been served by mailing the same to each of the persons named above,  
first class mail, postage prepaid, at Montpelier, Vermont, said address  
being the last known mailing address of said persons this 26th day  
of November, 1974.

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Subscribed and Sworn to this 26<sup>th</sup> day of November, 1974.

*Landice J. Kleininger*  
Notary Public

